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August 30, 2019

<u>Via Electronic Filing</u>

Public Utility Commission of Oregon
Attn: Filing Center
PO Box 1088
Salem, OR 97308-1088

Re: UM 1971 - Waconda Solar, LLC v. Portland General Electric Company

Attention Filing Center:

Enclosed for filing in the above-named docket is Portland General Electric Company's Response to Motion to Hold Waconda Solar LLC's Response to Portland General Electric Company's Second Motion for Summary Judgment in Abeyance and Motion to Set Schedule.

Thank you for your assistance.

Very truly yours,

Jeffrey S. Lovinger

Enclosure
906284

BEFORE THE PUBLIC UTILITY COMMISSION

OF OREGON

UM 1971

WACONDA SOLAR, LLC, Complainant, vs. PORTLAND GENERAL ELECTRIC COMPANY, Defendant.	**PORTLAND GENERAL ELECTRIC COMPANY'S RESPONSE TO MOTION TO HOLD WACONDA SOLAR LLC'S RESPONSE TO PORTLAND GENERAL ELECTRIC COMPANY'S SECOND MOTION FOR SUMMARY JUDGMENT IN ABEYANCE AND MOTION TO SET SCHEDULE**

Portland General Electric Company ("PGE") respectfully requests that the Administrative Law Judge ("ALJ") deny Waconda Solar, LLC's (Waconda") August 29, 2019 motion to hold Waconda's response to PGE's second motion for summary judgment in abeyance and to set a schedule ("Waconda's Motion").

I. INTRODUCTION

Waconda's Motion asks the ALJ for various alternate forms of relief in an effort to postpone Waconda's response to PGE's second motion for summary judgment. The ALJ should deny Waconda's Motion. Waconda does not need discovery in order to respond to PGE's second motion for summary judgment, and Waconda already has had sufficient time to prepare its response. PGE understands if Waconda and its counsel need reasonable extensions of time to accommodate their personal schedules, but Waconda's request to delay resolution of PGE's motion until mid-November is patently unreasonable.

Waconda's deadline to respond to PGE's motion for summary judgment is September 4, 2019. Three business days before that deadline, Waconda filed its Motion requesting, in the alternative:

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(1) Extending Waconda's response until mid-November 2019, to allow Waconda to conduct unspecified and unlimited discovery until October 9, 2019, and to allow Waconda to potentially file its own summary judgment motion by October 23, 2019, and only thereafter require Waconda to respond to PGE's pending motion;

(2) Extending Waconda's response to October 10, 2019, so Waconda can conduct two rounds of unspecified and unlimited discovery before responding to PGE's pending motion; or

(3) Extending Waconda's response to September 18, 2019, to accommodate Waconda's counsel's schedule.

PGE requests the ALJ deny Waconda's first two proposals because discovery from PGE will not assist Waconda in its response. Waconda has not identified the specific facts or information that it could obtain through discovery that would preclude summary judgment. Waconda's Motion therefore fails to meet the requirements of Oregon Rule of Civil Procedure ("ORCP") 47 F, which governs a party's request for a continuance to conduct discovery to oppose a summary judgment motion.

There is also no basis to grant Waconda's request for a one- to two-month extension of its response deadline. Nothing prevents Waconda from first responding to PGE's second motion for summary judgment, and subsequently conducting discovery and filing its own motion for summary judgment. Competing motions for summary judgment do not need to be synchronized. If Waconda decides to file its own summary judgment motion, the ALJ will be required to review that motion separately from PGE's motion, giving the nonmoving party for each motion the benefit of all reasonable inferences.[1]

Deferring Waconda's response and allowing unfocused discovery to move forward will not promote efficiency in this case. Waconda's counsel presented these same arguments in another

[1] *Brunozzi v. Cable Communications, Inc.*, 851 F3d 990, 995 (9th Cir. 2017) ("When the parties file cross-motions for summary judgment, we review each motion . . . separately, giving the nonmoving party for each motion the benefit of all reasonable inferences." (internal quotation marks and citation omitted).

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case against PGE, *Sandy River Solar, LLC v. PGE*, Docket No. UM 1967. In *Sandy River*, the complainant sought to compel broad and irrelevant discovery from PGE. The complainant argued that discovery, testimony, and a hearing were the most efficient way to resolve the case. However, PGE filed a motion for partial summary judgment seeking to resolve key issues of law in order to narrow the issues in the case and preempt expensive and time-consuming discovery.[2] ALJ Kirkpatrick denied the complainant's motions to compel and granted a stay of discovery.[3] The Commission ultimately granted PGE's motion for partial summary judgment[4] and, ultimately, the complainant withdrew its remaining claims.[5]

PGE believes that a similar outcome is likely in this case. This case is almost a year old. PGE has moved against all of Waconda's claims as a matter of law. Staying discovery and resolving the issues of law identified in PGE's second motion for summary judgment will eliminate or significantly narrow potential disputed issues of fact in this case.

PGE does not oppose Waconda's final request for a two-week extension until September 18, 2019 to respond to PGE's motion, so long as discovery is stayed until resolution of PGE's second motion for summary judgment.

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[2] *See Sandy River Solar LLC v. PGE*, Docket No. UM 1967, Docket No. UM 1967, PGE's Motion for Partial Summary Judgment (Feb. 27, 2019) (available at https://edocs.puc.state.or.us/efdocs/HAO/um1967hao164620.pdf).
[3] Docket No. UM 1967, ALJ Ruling (Mar. 13, 2019) (available at https://edocs.puc.state.or.us/efdocs/HDA/um1967hda142520.pdf).
[4] Docket No. UM 1967, Order No. 19-218 (June 24, 2019) (available at https://apps.puc.state.or.us/orders/2019ords/19-218.pdf).
[5] Docket No. UM 1967, Sandy River's Notice of Dismissal without Prejudice of Remaining Claims (Aug. 26, 2019) (available at https://edocs.puc.state.or.us/efdocs/HNA/um1967hna114426.pdf); *see also* Docket No. UM 1967, Order No. 19-285 (Aug. 29, 2019) (available at https://apps.puc.state.or.us/orders/2019ords/19-285.pdf).

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II. DISCUSSION

A. WACONDA HAS NOT DEMONSTRATED THAT A CONTINUANCE TO CONDUCT DISCOVERY IS WARRANTED UNDER ORCP 47 F.

Waconda's request for a continuance to conduct discovery for the purpose of opposing PGE's second motion for summary judgment does not comply with the requirements of ORCP 47 F, which applies to Commission complaint proceedings by operation of OAR 860-001-0000(1).

ORCP 47 F states, in most relevant part: "Should it appear from the affidavits or declarations of a party opposing the motion [for summary judgment] that the party cannot, for reasons stated, present by affidavit or declaration facts essential to justify the opposition of that party, the court . . . may order a continuance to permit . . . discovery to be had[.]"[6]

The Oregon Court of Appeals has recognized that ORCP 47 F is "practically identical" to Federal Rule of Civil Procedure ("FRCP") 56(d), and has held that the two rules "require the same construction."[7] FRCP 56(d) states in most relevant part: "If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may . . . allow time to . . . take discovery[.]"

State and federal courts in Oregon have held that "[t]he party seeking discovery to oppose the motion [for summary judgment] must show that the additional discovery may actually make a difference in the outcome of the motion [for summary judgment]" and that the party seeking discovery must "identify by affidavit the specific facts that further discovery would reveal, and

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[6] ORCP 47 F.

[7] *Harris v. Erikson*, 48 Or App 655 (1980) (at the time of the *Harris* decision, current ORCP 47 F was codified as ORCP 47 E, and current FRCP 56(d) was codified as FRCP 56(f); the decision states: "we view the language of ORCP 47 E which is practically identical to that of FRCP 56 f to require the same construction.").

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explain why those facts preclude summary judgment."[8] Vague assertions that additional discovery is necessary are insufficient.[9] The party seeking a continuance must provide more than mere speculation that the information sought to be discovered will establish a genuine issue of fact[10] and must establish a plausible basis for believing the information sought to be discovered actually exists.[11] Even if the information actually exists, it must be relevant to the issues to be determined on summary judgment.[12]

Waconda's Motion mentions several aspects of PGE's second motion for summary judgment that Waconda asserts justify discovery. As discussed below, Waconda fails to establish by affidavit, declaration, or otherwise that Waconda requires discovery of specific, relevant information for the identified purpose of opposing specific aspects of PGE's second motion for summary judgment. Indeed, Waconda's Motion fails to identify the specific discovery that Waconda seeks to conduct under the requested continuance. Rather, Waconda seeks a continuance so that it can conduct unspecified and unlimited discovery until October 9, 2019. If Waconda has

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[8] *Daul v. PPM Energy, Inc.*, 267 FRD 641, 649 (D. Or. 2010) (internal quotation marks and citations omitted); *see also Carson v. City of Portland*, 45 Or App 439, 447 (1980) (noting the need to make a showing by affidavit or otherwise that further discovery is necessary to enable a party respond to a motion for summary judgment); *Gleason v. International Multifoods Corp.*, 282 Or 253, 258 (1978) (discussing statutory predecessor to ORCP 47 F and noting need to file affidavit explaining why discovery is necessary before responding to a motion for summary judgment).

[9] *Robbins v. Amoco Prod. Co.*, 952 F2d 901, 907 (1992, 5th Cir.) (rejecting request to conduct formal discovery containing only vague assertions that discovery was needed to adequately oppose a motion for summary judgment and noting: "To preserve a complaint of inadequate opportunity to conduct discovery, the party opposing a motion for summary judgment must file a motion . . . explaining why it cannot oppose the summary judgment motion on the merits . . . the party resisting summary judgment must present specific facts explaining the inability to make a substantive response . . . and must specifically demonstrate how discovery will enable him to establish the existence of a genuine issue of material fact.") (internal citations omitted).

[10] *Resolution Trust Corp. v. North Bridge Assocs.*, 22 F3d 1198, 1206 (1st Cir. 1994) (rationale for continuance to allow discovery ahead of a response to a motion for summary judgment must raise "above mere speculation") (internal citation omitted).

[11] *Church of Scientology v. IRS*, 991 F2d 560, 562 (9th Cir. 1993), *vacated, in part on other grounds, reh den* 30 F3d 101 (9th Cir. 1993) (explaining that a request for continuance must specifically identify relevant information, and provide some basis for believing that the information sought actually exists; indicating that courts have denied a continuance where the evidence sought through discovery was almost certainly nonexistent or was an object of pure speculation; and indicating that where the prerequisite showings are made, denial of a continuance is disfavored).

[12] *See e.g., Sage Realty Corp. v. Insurance Co. of N. Am.*, 34 F3d 124, 128 (2nd Cir. 1994) (court properly denied request for discovery even though affidavit specifically described documents defendant wished to inspect, since documents contained no information that could possibly affect court's decision).

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any facts or information which it believes are relevant to these issues, then Waconda is free to assert those facts and support them with declarations as part of its response to PGE's second motion for summary judgment. But if Waconda needs discovery from PGE to create a genuine issue of material fact to defeat summary judgment, Waconda must make a showing that complies with the requirements of ORCP 47 F. For all of these reasons, Waconda's Motion fails to meet the requirements for a continuance under ORCP 47 F, and its motion for continuance should be denied.

1. Waconda does not identify any discovery it needs from PGE to create a genuine issue of material fact regarding Waconda's communications with PGE relating to an independent system impact study.

Waconda suggests that it must conduct discovery to respond to the claim in PGE's second motion for summary judgment that "Waconda has never requested from PGE any specific information or specific access for the identified purpose of conducting an independent system impact study."[13] Waconda fails to explain what discovery it intends to conduct with regard to this issue, what facts it believes it would discover, or how any such discovery would actually make a difference in the outcome of the motion for summary judgment.

It is difficult to imagine what discovery Waconda believes is necessary on this point. If Waconda believes that it made a written request to PGE for specific information or specific access for the identified purpose of conducting an independent system impact study, then Waconda would be in possession of a copy of such a written communication and can submit that documentary evidence as part of a declaration in support of its response opposing PGE's second motion for summary judgment. Likewise, if Waconda believes one of its representatives made an oral request to PGE for specific information or specific access for the identified purpose of conducting an independent system impact study, then Waconda's representative in possession of that information

[13] Waconda's Motion at 4, citing to PGE's Second Motion for Summary Judgment at 3, and Declaration of Jason Zappe in Support of PGE's Second Motion for Summary Judgment ¶ 8.

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can submit a sworn declaration attesting to such facts as part of Waconda's response in opposition to PGE's second motion for summary judgment.

There is no reason to believe that PGE has evidence of communications with Waconda that would otherwise not already be in Waconda's possession. Indeed, PGE has already submitted the sworn declaration of its employee, Jason Zappe, attesting to the fact that Waconda has not made any request to PGE for specific information or specific access for the identified purpose of conducting an independent system impact study. Waconda has simply failed to demonstrate any need to delay for discovery on this issue.

2. Waconda does not identify any discovery it needs from PGE to create a genuine issue of material fact regarding the sufficiency of the feasibility studies.

Waconda also suggests that it must conduct discovery to respond to the claim in PGE's second motion for summary judgment that "[A]ny errors in the feasibility studies were immaterial and were corrected in subsequent studies."[14] Again, Waconda has failed to explain what specific discovery from PGE would address this issue, what facts Waconda believes it could obtain through discovery, or why such facts would impact the resolution of PGE's second motion for summary judgment.

Waconda's original complaint and first amended complaint identify alleged errors in PGE's feasibility studies. PGE's second motion for summary judgment addresses each of the alleged errors and explains that they were immaterial and corrected in subsequent studies. These facts are apparent on the face of the study reports that were made a part of the record by the first amended complaint and PGE's answer. Waconda does not need discovery from PGE to respond to PGE's motion. The relevant facts are contained within the studies themselves and are subject

[14] Waconda's Motion at 4, citing to PGE's Second Motion for Summary Judgment at 3.

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to review and interpretation by the Commission in connection with PGE's second motion for summary judgment.

3. Waconda does not identify any discovery it needs from PGE to address Waconda's selection of its own COD.

Waconda next suggests that it must conduct discovery to respond to the claim in PGE's second motion for summary judgment that "Waconda 'select[ed] an overly aggressive [Commercial Operation Date]."[15] Waconda identifies no specific discovery that it will seek from PGE to address this point. Waconda also fails to explain any facts it expects to obtain from PGE through discovery, or how those facts could have any impact on the outcome of PGE's second motion for summary judgment.

PGE's statements in its motion for summary judgment are based on the undisputed facts that Waconda selected a scheduled Commercial Operation Date ("COD") of February 1, 2020, that is 20 months after the effective date of the power purchase agreement ("PPA").[16] Waconda had a right to select a scheduled COD that was up to 36 months after the effective date of the PPA, or as late as June 4, 2021. These facts are based on the express language of the PPA and Waconda's rights under applicable Commission orders. Discovery would not alter the fact that Waconda selected a scheduled COD that was 20 months after the PPA effective date, when Waconda could have selected a schedule COD that was as many as 36 months after the PPA effective date.

4. Waconda does not identify any discovery that it needs from PGE to address Waconda's failure to sufficiently allege or identify any harm that it will suffer relating to its COD.

Waconda suggests that it must conduct discovery to respond to the claim in PGE's second motion for summary judgment that "[i]t is unclear whether Waconda will miss its COD or suffer

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[15] Waconda's Motion at 4, citing to PGE's Second Motion for Summary Judgment at 3.
[16] *See PGE Informational Filing of Qualifying Facility Agreements*, Docket No. RE 143, Waconda PPA at Section 2.2.2 (July 2, 2018) (available at https://edocs.puc.state.or.us/efdocs/HAQ/re143haq164533.pdf).

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any harm if it does."[17] Waconda identifies no specific discovery that it seeks to conduct to address this point, and does not explain the facts it expects to obtain through discovery or how those facts are expected to have any impact on the outcome of PGE's second motion for summary judgment.

PGE's second motion for summary judgment acknowledges that whether Waconda will miss its scheduled COD is a future contingency that will only result in damages under the PPA if the market price of power exceeds the contract price during the period between the scheduled COD and the date Waconda achieves commercial operation. These facts are evident on the face of the PPA. The PPA identifies the scheduled COD[18] and provides for Start-Up Lost Energy Value payments by Waconda to PGE only if market prices exceed contract prices during the period between the scheduled COD and the date Waconda actually achieves COD.[19] There is no basis to believe that discovery would contradict the plain language of the PPA and, regardless, Waconda has not met its burden to identify why discovery on this point could alter the results of PGE's second motion for summary judgment.

5. Discovery is not necessary in connection with the Commission's interpretation of its rules.

Waconda's remaining arguments in its motion misconstrue the purpose and effect of PGE's second motion for summary judgment. PGE's legal arguments regarding the interpretation and application of the Commission's rules and enabling statutes relating to interconnection studies and third-party consultants do not require development of any facts through discovery. To the contrary, those arguments are based only on the language of the statutes and the relevant rules. Discovery is not necessary to resolve those issues of law.

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[17] Waconda's Motion at 4, citing to PGE's Second Motion for Summary Judgment at 3.
[18] Waconda PPA at Section 2.2.2 ("By February 1, 2020, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date")
[19] *See id*. at Section 1.35 (defining "Start-Up Lost Energy Value" as "the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date [.]").

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First, Waconda asserts that PGE's internal studies for the Waconda interconnection may indicate whether PGE provided Waconda with the information required by OAR 860-082-0060.[20] Waconda asserts that PGE is required by the rule governing the content of a feasibility study to provide its analysis or "studies" as well as to identify the anticipated adverse impacts from the interconnection. But this assumes the legal conclusion in dispute. PGE has pointed out in its second motion for summary judgment that the rule governing the content of feasibility studies requires PGE to identify adverse impacts and does not require PGE to provide any analysis underlying those conclusions.[21] Whether PGE conducted an analysis that is not reported in the feasibility study has no bearing on whether the Commission rules require such an analysis to be reported in the study.

Second, Waconda states that discovery of "PGE's internal processes and procedures from conducting a system impact study can shed light on whether or not PGE has met its obligation under the OARs with regard to Waconda's request to hire a third party consultant[.]"[22] Whether or not PGE must agree under OAR 860-082-0060(9) to allow Waconda to hire a third-party consultant to conduct the remaining interconnection studies is purely a question of law requiring the Commission to interpret OAR 860-082-0060(9). This question has already been answered by the Commission—without any accompanying discovery—through the Commission's analysis and conclusions in Order No. 19-218.[23] PGE's internal processes and procedures for conducting a system impact study have no bearing on whether OAR 860-082-0060(9) requires PGE to agree to allow Waconda to hire a third party to conduct the remaining interconnection studies.

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[20] Waconda's Motion at 10.
[21] PGE's Second Motion for Summary Judgment at 11-17 (Aug. 20, 2019).
[22] Waconda's Motion at 10.
[23] Docket No. UM 1967, Order No. 19-218.

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Third, Waconda states that discovery regarding "PGE's internal communications could be probative of whether or not PGE acted with discriminatory intent toward Waconda, or whether PGE acted with bad faith or unreasonably with respect to Waconda Solar's requests."[24] However, these allegations will have no effect on the resolution of PGE's second motion for summary judgment. Waconda's fourth claim for relief alleges that PGE discriminated against Waconda by allegedly failing to meet interconnection deadlines, by refusing to agree to allow Waconda to hire a third party consultant to conduct the remaining studies, and by hiring its own utility consultants to conduct interconnection studies.[25] PGE's second motion for summary judgment explains that, as a matter of law, Waconda has not alleged an adequate claim for relief because PGE has not missed interconnection deadlines, OAR 860-082-0060(9) gives PGE the discretion to refuse to allow Waconda to hire a consultant to conduct the remaining studies, and the rule instead gives PGE the discretion to hire its own consultants to conduct studies.[26]

Waconda has not identified any way in which discovery of PGE's internal communications could be expected to change these facts. Simply put, Waconda's Motion fails to explain why discovery of PGE's internal communications is necessary to oppose PGE's second motion for summary judgment.

B. COMMISSION PRECEDENT SUPPORTS REQUIRING WACONDA TO RESPOND TO PGE'S SECOND MOTION FOR SUMMARY JUDGMENT WITHOUT A CONTINUANCE FOR DISCOVERY.

PGE has a right under the Commission's rules and ORCP 47 to file a motion for summary judgment at any time prior to 60 days before the date set for hearing. Under ORCP 47 C, the Commission is required to "grant the motion if the pleadings, depositions, affidavits, declarations,

[24] Waconda's Motion at 10.
[25] First Amended Complaint, ¶¶ 182-90 (July 31, 2019).
[26] PGE's Second Motion for Summary Judgment at 45-47.

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and admissions on file show that there is no genuine issue as to any material fact and that the moving party is entitled to prevail as a matter of law."[27] The summary judgment process increases judicial and administrative efficiency because it allows a defendant, such as PGE, to test the legal sufficiency of the claims asserted by a complaint and to obtain dismissal of those claims which fail as a matter of law.

PGE believes that all of Waconda's claims must fail as a matter of law and that this proceeding can be efficiently and completely resolved through PGE's second motion for summary judgment. However, even if PGE is wrong and its motion for summary judgment resolves only some of the claims asserted by Waconda, the resolution of PGE's motion now, ahead of any further process in this case, will simplify the remainder of the case and the resolution of any claims that may survive PGE's second motion for summary judgment. It is even possible that a partial grant of summary judgment will lead to the resolution of the case as it did recently in *Sandy River Solar, LLC, v. PGE*, Docket No. UM 1967, where PGE moved for and obtained partial summary judgment on one of four claims[28] and the complainant then filed a notice of voluntary withdrawal of the remaining three claims.[29]

The ALJ's decision in Docket UM No. 1967 is recent precedent supporting a stay of discovery pending resolution of PGE's second motion for summary judgment. In that case, ALJ Kirkpatrick determined that resolving the legal issues in the summary judgment motion would promote efficient resolution of the case.[30] In fact, the case resolved shortly after the Commission's decision on summary judgment without further cost to the parties.[31]

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[27] ORCP 47 C.
[28] *See* Docket No. UM 1967 Order No. 19-218 (granting PGE's motion for partial summary judgment).
[29] Docket No. UM 1967, Sandy River's Notice of Dismissal without Prejudice of Remaining Claims.
[30] Docket No. UM 1967, ALJ Ruling (granting stay of discovery and setting procedural discovery).
[31] Docket No. UM 1967, Order No. 19-285 (granting dismissal without prejudice and closing docket).

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Likewise, in Docket No. UM 1877, *Bottlenose Solar LLC v. PGE* (and eleven related cases), ALJ Arlow granted a stay of discovery[32] and required the parties to fully brief PGE's second motion for summary judgment,[33] which led to the complainants withdrawing their complaints and closing the cases before the Commission had an opportunity to rule on PGE's second motion for summary judgment.[34]

Waconda's Motion argues that in Docket No. UM 1931, *PGE v. Alfalfa Solar LLC*, ALJ Arlow allowed PGE to conduct discovery before responding to a motion for summary judgment, and that the outcome in that case should guide the ALJ in this case.[35] This is incorrect. In Docket No. UM 1931, defendants filed a motion for summary disposition and complainant PGE sought to conduct discovery. The question in that case involved the interpretation of executed power purchase agreements. ALJ Arlow concluded that there was sufficient ambiguity in the power purchase agreements that he could not grant the motion for summary disposition on the record before him, and accordingly he denied the motion.[36] Having denied the motion for summary disposition, ALJ Arlow then ordered the parties to engage in an extremely narrow and well-defined scope of discovery to address the parties' states of mind when they entered into the power purchase agreements.[37]

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[32] *Bottlenose Solar LLC v. PGE*, Docket No. UM 1877, ALJ Ruling (Feb. 13, 2018) (available at https://edocs.puc.state.or.us/efdocs/HDC/um1877hdc113418.pdf).
[33] *Id.* at 2; *see* Docket No. UM 1877, Complainants' Response to PGE's Motion for Summary Judgment (Mar. 9, 2018) (available at https://edocs.puc.state.or.us/efdocs/HAC/um1877hac164236.pdf); *see also* Docket No. UM 1877, PGE's Reply in Support of Motion for Summary Judgment (Apr. 6, 2018) (available at https://edocs.puc.state.or.us/efdocs/HAC/um1877hac17554.pdf); *see also* Docket No. UM 1877, Complainants' Sur-Response in Support of Response to PGE's Motion for Summary Judgment (Apr. 20, 2018) (available at https://edocs.puc.state.or.us/efdocs/HAC/um1877hac163829.pdf).
[34] Docket No. UM 1877, Order No. 19-001 (Jan. 2, 2019) (order approving withdrawal and closing case) (available at https://apps.puc.state.or.us/orders/2019ords/19-001.pdf).
[35] Waconda's Motion at 6.
[36] *PGE v. Alfalfa Solar LLC*, Docket No. UM 1931, ALJ Ruling at 6-7 (Aug. 23, 2018).
[37] *Id.* at 9.

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ALJ Arlow's rulings in Docket No. UM 1931 therefore do not support the outcome sought by Waconda in the instant case. Rather, ALJ Arlow's rulings in UM 1931 concluded, after assessing the merits of the pending motion for summary disposition, that well-defined and narrowly tailored discovery should occur.[38] Here, there has been no determination that PGE's second motion for summary judgment should be denied and there is no narrowly-tailored discovery dispute pending for resolution. Recent Commission precedent supports resolving pending motions for summary judgment ahead of the completion of discovery because a well-founded motion for summary judgment can resolve the case or significantly narrow the issues going forward, simplify future discovery, and streamline any future testimony or hearing on claims that survive summary judgment.

C. THE ALJ SHOULD DENY WACONDA'S ALTERNATIVE REQUESTS.

Waconda's primary request is to grant a continuance or abeyance of Waconda's obligation to respond to PGE's second motion for summary judgment, allow Waconda to conduct unlimited and unspecified discovery until October 9, 2019, and then allow Waconda an opportunity to file its own motion for summary judgment before Waconda is required to respond to PGE's pending motion for summary judgment. The ALJ should reject this request because Waconda has not demonstrated that a continuance for discovery under ORCP 47 F is warranted.

In the alternative, Waconda has asked the Commission for a continuance until October 10, 2019, to conduct two rounds of unspecified and unlimited discovery prior to filing its response. Again, Waconda has not made the required demonstration under ORCP 47 F that a continuance and additional discovery are necessary or warranted before Waconda can respond to PGE's motion for summary judgment. As a result, the ALJ should reject this alternative request for relief.

[38] *Id.*

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As a final alternative, Waconda has requested that the Commission grant it a two-week extension to respond to PGE's second motion for summary judgment (moving the deadline from September 4, 2019, to September 18, 2019). Waconda asserts that this extension is necessary because its lead counsel has been out of the office and because of the press of other business. Although Waconda has waited until three business days before its response deadline to make this request and Waconda has had the vast majority of PGE's second motion for summary judgment for more than five weeks, PGE does not oppose a two-week extension so long as discovery is stayed until resolution of PGE's second motion for summary judgment.

III. CONCLUSION

For all of the reasons described above, PGE respectfully requests that the ALJ deny Waconda's Motion. In the alternative, if the ALJ concludes that Waconda should be granted an extension of time to respond to PGE's second motion for summary judgment, PGE respectfully requests that any such extension be conditioned upon a full stay of discovery pending resolution of the summary judgment motion.

DATED this 30th day of August, 2019.

Respectfully submitted,

/s/ Donald Light
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